

Message Text

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SUBJECT: CIVAIR : US-FRG CIVIL AVIATION NEGOTIATIONS;
U.S. POSITION PAPER

1. FOLLOWING IS TEXT OF U.S. POSITION PAPER FOR US-FRG
CONSULTATIONS ON CIVIL AVIATION NEGOTIATIONS. PLS TRANSMIT
TO APPROPRIATE GERMAN AUTHORITIES.

-- "1. OBJECTIVES OF AGREEMENT. THE US AND FRG SHOULD
STRIVE FOR AN AGREEMENT THAT WILL RESULT IN IMPROVED AIR
SERVICE FOR THEIR TRAVELERS AND SHIPPERS, WITH PARTICULAR
EMPHASIS ON ENABLING THE AIRLINES OF BOTH COUNTRIES TO
INITIATE, ON AN INDIVIDUAL BASIS, INNOVATIVE FARES AND
SERVICES AND TO INCREASE OPERATING FLEXIBILITY, PRODUCTIV-
ITY, AND EFFICIENCY. TOURISM, BUSINESS TRAVEL, AND AIR
CARGO OPERATIONS BETWEEN OUR TWO COUNTRIES SHOULD BE
FACILITATED ON A MUTUALLY BENEFICIAL BASIS. TO THESE ENDS,
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BILATERAL PROCEDURES SHOULD BE REVISED TO ENSURE A FREER,
MORE COMPETITIVE AVIATION REGIME AND TO MINIMIZE GOVERN-
MENTAL INTERFERENCE WITH THE PRACTICAL BUSINESS DECISIONS
OF AIRLINE MANagements.

-- "2. ELEMENTS OF AN AGREEMENT. CONSISTENT WITH THESE
OBJECTIVES, THE UNITED STATES PROPOSES THAT THE EXISTING
US-FRG BILATERAL BE REVISED TO INCORPORATE THE FOLLOWING
BASIC POINTS :

-- "A. ROUTE SCHEDULES. THE AIRLINES OF BOTH COUNTRIES SHOULD HAVE THE RIGHT, UPON DESIGNATION BY THEIR RESPECTIVE GOVERNMENTS, TO PROVIDE SERVICE ON A SCHEDULED BASIS BETWEEN ANY POINT OR POINTS IN THE UNITED STATES AND ANY POINT OR POINTS IN THE FEDERAL REPUBLIC OF GERMANY. AIRLINES SHOULD BE ALLOWED TO COTERMINALIZE ANY POINTS AT THEIR OPTION. THE UNITED STATES IS PREPARED TO DISCUSS A NUMBER OF OPTIONS ON THE ISSUE OF INTERMEDIATE POINTS.

-- "ON BEYOND OPERATIONS, THE UNITED STATES ROUTE SCHEDULE SHOULD BE AMENDED TO ELIMINATE THE PRESENT DIRECTIONAL LIMITATIONS ON US AIRLINES' RIGHTS. ACCORDINGLY, US AIRLINES WOULD BE ALLOWED TO OPERATE THROUGH ANY GERMAN POINTS TO ANY FOREIGN POINTS.

-- "B. CAPACITY PROVISIONS. EACH DESIGNATED AIRLINE SHOULD BE PERMITTED TO DETERMINE ITS OWN CAPACITY, SCHEDULING, TYPE OF AIRCRAFT, ETC., BASED UPON MARKET AND COMPETITIVE CONSIDERATIONS. THE CAPACITY PRINCIPLES NOW CONTAINED IN ARTICLES 9 AND 10 OF THE AGREEMENT SHOULD THEREFORE BE ELIMINATED, ALTHOUGH OPERATIONS THROUGH INTERMEDIATE AND BEYOND POINTS WOULD STILL HAVE TO BE PART OF A US-FRG THROUGH OPERATION.

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-- "C. CHANGE OF GAUGE. CHANGES SHOULD BE PERMITTED IN THE TERRITORY OF EITHER PARTY, INCLUDING FAN AND 'Y' CHANGES, PROVIDED ONLY THAT ON THE OUTWARD JOURNEY THE TOTAL CAPACITY OF THE OUTGOING FLIGHT OR FLIGHTS DOES NOT EXCEED THE CAPACITY OF THE INCOMING FLIGHT (AND VICE VERSA FOR THE RETURN JOURNEY). CHANGES IN THIRD COUNTRIES WOULD REMAIN UNREGULATED.

-- "D. CHARTER OPERATING RIGHTS. EXISTING RESTRAINTS ON CHARTER OPERATIONS, WITH RESULTING COSTS TO AIRLINES AND TOUR OPERATORS AND DENIAL OF SERVICE TO TRAVELERS AND SHIPPERS, SHOULD BE ELIMINATED. FURTHER, THE OPERATING RIGHTS OF CHARTER CARRIERS SHOULD BE CLARIFIED AND INCORPORATED INTO THE BASIC US-FRG BILATERAL. ACCORDINGLY, THE AIRLINES OF BOTH COUNTRIES SHOULD BE ACCORDED THE RIGHT TO CONDUCT PASSENGER, CARGO, AND COMBINATION CHARTER OPERATIONS BETWEEN ANY POINT OR POINTS IN THE UNITED STATES AND ANY POINT OR POINTS IN THE FRG. EACH GOVERNMENT SHOULD AGREE TO ACCEPT AS CHARTERWORTHY ALL TRAFFIC THAT CONFORMS TO THE CHARTER RULES OF THE COUNTRY OF THE TRAFFIC'S ORIGIN. FURTHER, EACH GOVERNMENT SHOULD AGREE THAT ITS CHARTERWORTHINESS RULES FOR US-FRG TRAFFIC WILL BE NO MORE RESTRICTIVE THAN CERTAIN AGREED CRITERIA

(ABSENT THE CONSENT OF THE OTHER GOVERNMENT). FOR EXAMPLE, NEITHER GOVERNMENT SHOULD APPLY AN ADVANCE-BOOKING PERIOD FOR US-FRG TRAFFIC THAT EXCEEDS 14 DAYS OR

A MINIMUM-STAY REQUIREMENT EXCEEDING 4 DAYS. SIMILARLY, IN THE CASE OF CARGO CHARTERS THE COUNTRY OF ORIGIN SHOULD AGREE TO BE NO MORE RESTRICTIVE THAN CERTAIN AGREED CRITERIA.

-- "WITH RESPECT TO CHARTERS FOR MILITARY PERSONNEL AND DEPENDENTS, THE COUNTRY WHOSE MILITARY FORCES ARE AT ISSUE SHOULD FOR ALL PURPOSES BE REGARDED AS THE COUNTRY OF UNCLASSIFIED

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ORIGIN.

-- "E. RATES AND FARES. THE PRESENT FARE ARTICLE SHOULD BE REPLACED BY AN ARTICLE UNDER WHICH A FARE FOR US-FRG TRAVEL PROPOSED BY AN AIRLINE OF EITHER COUNTRY OR BY A THIRD-FLAG AIRLINE WOULD BE ALLOWED IN EFFECT UNLESS BOTH THE US AND FRG AGREED THAT THE FARE WAS IMPROPER. THE ARTICLE WOULD PROVIDE THAT SUCH JOINT ACTION MAY BE UNDERTAKEN WHERE A FARE IS PREDATORY OR DISCRIMINATORY, UNDULY HIGH DUE TO AN ABUSE OF A DOMINANT POSITION, OR ARTIFICIALLY LOW BECAUSE OF GOVERNMENT SUBSIDY. IN THE EVENT OF FARE DISPUTES, THE GOVERNMENTS WOULD COOPERATE IN SECURING THE AIRLINE ACCOUNTING INFORMATION NECESSARY FOR REASONED CONSULTATIONS.

-- "ADDITIONALLY, ON THEIR OPERATIONS INVOLVING INTER-MEDIATE AND BEYOND POINTS, FRG AND US AIRLINES WOULD BE PERMITTED TO MATCH THE FARES OF THIRD- AND FOURTH-FREEDOM AIRLINES. THE DRAFT OF A PROPOSED FARE ARTICLE IS ATTACHED AS APPENDIX A. THIS SAME BASIC REGIME WOULD APPLY TO BOTH SCHEDULED AND CHARTER RATES AND FARES.

-- "F. MULTIPLE DESIGNATION. THE EXISTING BILATERAL RIGHT OF MULTIPLE DESIGNATION MUST NOT BE IMPINGED. EACH COUNTRY WILL CONTINUE TO BE FREE TO DESIGNATE AS MANY AIRLINES AS IT WISHES FOR ANY MARKET COVERED BY THE AGREEMENT.

-- "G. NON-DISCRIMINATION AND TRAFFIC ACCESS. THE AIRLINES OF BOTH COUNTRIES-MUST BE GUARANTEED FREEDOM FROM ALL DISCRIMINATORY PRACTICES AND MUST HAVE FULL, EQUAL RIGHTS AND OPPORTUNITIES TO SOLICIT AND OBTAIN TRAFFIC ORIGINATING IN EITHER COUNTRY. INEQUITIES MUST BE UNCLASSIFIED

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ELIMINATED IN SUCH MATTERS AS GROUND FACILITIES, CUSTOMS SERVICES, TICKETING PROCEDURES, ACCESS TO EXISTING AND FUTURE MARKETING FACILITIES, AND INTEGRATION WITH DOMESTIC AIR AND SURFACE TRANSPORTATION.

-- "3. COMMENTS : THE CHANGES IN ROUTE RIGHTS REFLECTED ABOVE REPRESENT A MAJOR EXPANSION OF THE RIGHTS OF FRG AIRLINES. THE UNITED STATES IS NEVERTHELESS PREPARED TO MAKE THIS OFFER, EVEN THOUGH AT PRESENT THE REVENUES ACCRUING TO THE AIRLINES OF BOTH SIDES UNDER THE EXISTING AGREEMENT ARE WELL BALANCED AND EVEN THOUGH HISTORICALLY THE FRG AIRLINES HAVE ENJOYED A DECIDED REVENUE ADVANTAGE. BUT IN RETURN FOR THIS IMPORTANT CONCESSION (A CONCESSION WHICH THE UNITED STATES HAS NOT PREVIOUSLY OFFERED IN ANY OF ITS BILATERAL NEGOTIATIONS), THE UNITED STATES MUST OBTAIN SATISFACTION ON ITS BASIC OBJECTIVES.

-- "ONE US OBJECTIVE IS THE ELIMINATION OF PRESENT DIRECTIONAL RESTRICTIONS IN THE ROUTE DESCRIPTION FOR US AIRLINES -- AN IMPORTANT BUT RELATIVELY SMALL CHANGE. ANOTHER IS THE ELIMINATION OF THE EXISTING CAPACITY PROVISIONS IN THE BILATERAL AGREEMENT, A CHANGE THAT ELIMINATES RESTRICTIONS IMPOSED UPON THE AIRLINES OF BOTH SIDES (ALTHOUGH AT PRESENT US AIRLINES MIGHT BE SEEN AS ACHIEVING A GREATER IMMEDIATE BENEFIT). UNDER PRESENT CIRCUMSTANCES, THE CHANGE-OF-GAUGE PROPOSAL AND THE REAFFIRMATION OF MULTIPLE DESIGNATION ARE ALSO PRINCIPALLY OF BENEFIT TO US AIRLINES. BUT OTHER BASIC FEATURES OF THE US PROPOSAL -- A LIBERALIZED CHARTER REGIME AND A REVISED FARES ARTICLE -- ARE WHOLLY RECIPROCAL IN THEIR IMPACT, AND SHOULD PROVE OF MAJOR BENEFIT TO THE AIRLINES AND GENERAL ECONOMIES OF BOTH SIDES.

-- "THE PROPOSED CHANGES ON CHARTERS SHOULD REDUCE THE OPERATING COSTS OF CARRIERS, EXPAND ACCESS TO MARKETS, AND BENEFIT TRAVELERS, SHIPPERS, TOUR OPERATORS, AND UNCLASSIFIED

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CARRIERS ALIKE. ON THE ISSUE OF FARES, IT IS CRITICAL THAT AIRLINES HAVE FLEXIBILITY TO SET RATES AND FARES IN THEIR OWN INDIVIDUAL DISCRETION. THIS INCLUDES THE LEVEL OF RATES AND FARES, THEIR TERMS AND CONDITIONS, AND THE AVAILABILITY OF INTERLINE AND INTRALINE COMBINATION FARES. FURTHER, REDUCING THE REGULATORY ROLE OF GOVERNMENTS IN THE FARE-SETTING PROCESS IS CONSISTENT WITH THE COMPETITIVE, FREE-MARKET APPROACH THAT HAS BEEN CENTRAL TO THE ECONOMIC POLICIES OF BOTH THE UNITED STATES AND GERMANY. PARTICULARLY IN LIGHT OF THE DECLINING ROLE OF IATA IN RATE-SETTING IN THE NORTH ATLANTIC AND ELSEWHERE, A NEW BILATERAL FARE MECHANISM MUST BE AGREED TO BETWEEN THE US AND FRG TO AVOID THE UNHAPPY SPECTRE OF VIRTUALLY CONTINUOUS INTERGOVERNMENTAL DISPUTES ON RATES AND FARES.

-- "WE RECOGNIZE THAT EXISTING LIMITATIONS ON AIRCRAFT AVAILABILITY AND OTHER CONSTRAINTS MAY LIMIT FOR THE

SHORT TERM THE PRACTICAL FEASIBILITY FOR THE AIRLINES OF

BOTH SIDES TO EFFECT DRAMATIC INCREASES IN US-FRG SERVICE.
BUT UNDER THE PROPOSED US FORMULATION, AIRLINES WILL BE
PERMITTED TO MAKE FUTURE EXPANSIONS WITHOUT AWAITING
COMPLEX AND FREQUENTLY DIFFICULT INTERGOVERNMENTAL
NEGOTIATIONS ON ROUTES, FARES, AND CAPACITIES. THE FREE
MARKET WILL GOVERN, AS IT DOES IN VIRTUALLY ALL OTHER
ASPECTS OF US-FRG TRADE."

2. FOREGOING TEXT IS TO BE DELIVERED TO GERMAN EMBASSY,
WASHINGTON, MORNING OF AUGUST 30. TEXT OF RATE ARTICLE
WILL FOLLOW BY SEPTTEL. CHRISTOPHER

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